



6560-50-P

## **ENVIRONMENTAL PROTECTION AGENCY**

### **40 CFR Part 52**

**[EPA-HQ-OAR-2018-0135; FRL-9976-35-OAR]**

#### **Findings of Failure to Submit State Implementation Plan Submissions for the 2012 Fine Particulate Matter National Ambient Air Quality Standards (NAAQS)**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The U.S. Environmental Protection Agency (EPA) is taking final action to find that three states have failed to submit timely revisions to their state implementation plans (SIPs) as required to satisfy certain requirements under the Clean Air Act (CAA) for implementation of the annual 2012 Fine Particulate Matter National Ambient Air Quality Standards (2012 PM<sub>2.5</sub> NAAQS). These findings of failure to submit apply to states with overdue SIP revisions (or attainment plans) for certain areas initially designated as nonattainment and classified as Moderate for the 2012 PM<sub>2.5</sub> NAAQS on April 15, 2015. The SIP revisions to address all applicable Moderate area attainment plan requirements for these areas were due on October 15, 2016. If a state does not make the required complete SIP submission within 18 months of the effective date of these findings, the CAA requires the imposition of sanctions for the affected area(s). In addition, EPA is obligated to promulgate a federal implementation plan (FIP) to address any outstanding SIP requirements, if a state does not submit, and EPA does not approve, a state's submission within 24 months of the effective date of these findings.

**DATES:** The effective date of this action is **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

**ADDRESSES:** EPA has established a docket for this action under Docket ID No. EPA-HQ-OAR-2018-0135. All documents in the docket are listed and publicly available at <http://www.regulations.gov>. Although listed in the index, some information is not publicly available, *i.e.*, Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available either electronically at <http://www.regulations.gov> or in hard copy at the EPA Docket Center (EPA/DC), EPA WJC West Building, Room 3334, 1301 Constitution Avenue, NW, Washington, DC. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566-1744, and the telephone number for the Office of Air and Radiation Docket and Information Center is (202) 566-1742.

**FOR FURTHER INFORMATION CONTACT:** Mr. Patrick Lessard, U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Air Quality Policy Division, Mail Code: C539-01, 109 T.W. Alexander Drive, Research Triangle Park, NC 27711; by telephone (919) 541-5383; or by email at [lessard.patrick@epa.gov](mailto:lessard.patrick@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. General Information**

#### *A. Notice and Comment Under the Administrative Procedure Act (APA)*

Section 553 of the APA, 5 U.S.C. 553(b)(e)(B), provides that, when an agency for good cause finds that notice and public procedures are impracticable, unnecessary or contrary to the public interest, the agency may issue a rule without providing notice and an opportunity for public comment. EPA has determined that there is good cause for making this final agency action

without prior proposal and opportunity for comment because no significant EPA judgment is involved in making findings of failure to submit SIPs, or elements of SIPs. Rather, the findings are required by the CAA where states have made no submissions to meet the SIP requirements, or where EPA has separately determined that they made incomplete submissions. Thus, notice and public comment procedures are unnecessary. EPA finds that this constitutes good cause under 5 U.S.C. 553(b)(3)(B).

*B. How can I get copies of this document and other related information?*

In addition to being available in the docket, an electronic copy of this action will be posted at <https://www.epa.gov/pm-pollution/implementation-national-ambient-air-quality-standards-naaqs-fine-particulate-matter>.

*C. Where do I go if I have a specific state question?*

For questions related to specific states mentioned in this notice, please contact the appropriate EPA Regional office:

<b>Regional Offices</b>	<b>States</b>
Susan Spielberger, Associate Director, Office of Air Program Planning, Mailcode 3AP30, (215) 814-5356 or Gerallyn Duke, Acting Associate Director, Office of Permits and State Programs, Mailcode 3AP10, Region 3, 1650 Arch Street, Philadelphia, PA 19103, (215) 814-2084.	Pennsylvania.
Doris Lo, Chief, Rulemaking Office, Mailcode AIR-4, (415) 972-3959 or Laura Lawrence, Acting Chief, Planning Office, Mailcode AIR-4, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, (415) 972-3407.	California.
Gina Bonifacino, Acting Unit Manager, Air Planning Unit, Mailcode AWT-50, Office of Air and Waste, 1200 6 <sup>th</sup> Avenue Suite 900, Seattle, WA 98101, (206) 553-2970.	Idaho.

*D. How is the preamble organized?*

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**II. Background**

Airborne particulate matter (PM) can be composed of a complex mixture of particles in both solid and liquid form. Particulate matter can be of different sizes, commonly referred to as “coarse” and “fine” particles. Fine particles, in general terms, are PM with an aerodynamic diameter less than or equal to a nominal 2.5 micrometers ( $\mu\text{m}$ ). For this reason, particles of this size are referred to as  $\text{PM}_{2.5}$ .

EPA first promulgated annual and 24-hour NAAQS for PM<sub>2.5</sub> in July 1997<sup>1</sup> and then revised the 24-hour PM<sub>2.5</sub> NAAQS in October 2006.<sup>2</sup> Most recently, on December 14, 2012, EPA revised the primary annual PM<sub>2.5</sub> standard by lowering the level from 15.0 to 12.0 micrograms per cubic meter of air (µg/m<sup>3</sup>) to provide increased protection against health effects associated with long- and short-term PM<sub>2.5</sub> exposures. EPA did not revise the secondary annual PM<sub>2.5</sub> standard, which remains at 15.0 µg/m<sup>3</sup>.<sup>3</sup> In addition, EPA retained the level and form of the primary and secondary 24-hour PM<sub>2.5</sub> standards to continue to provide supplemental protection against health and welfare effects associated with short-term PM<sub>2.5</sub> exposures.

Promulgation of a revised NAAQS triggers a requirement for EPA to designate areas of the country as nonattainment, attainment, or unclassifiable for the standards. As prescribed by CAA section 188(a), areas designated as nonattainment for a PM<sub>2.5</sub> NAAQS are initially classified as Moderate. Designations and initial classifications for 14 areas in six states as Moderate nonattainment for the 2012 PM<sub>2.5</sub> NAAQS became effective on April 15, 2015.<sup>4</sup>

Nonattainment areas for PM<sub>2.5</sub> are subject to the general nonattainment area planning requirements of CAA section 172 and to the PM-specific planning requirements of CAA sections 188-189. On August 24, 2016, EPA established a final implementation rule (PM<sub>2.5</sub> SIP Requirements Rule)<sup>5</sup> outlining the attainment planning and control requirements for current and future PM<sub>2.5</sub> NAAQS. Accordingly to that rule, Moderate area PM<sub>2.5</sub> SIP submissions shall include base year emissions inventory requirements, an attainment projected emissions

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<sup>1</sup> 62 FR 38652 (July 18, 1997).

<sup>2</sup> 71 FR 61143 (October 17, 2006).

<sup>3</sup> 78 FR 3086 (January 15, 2013).

<sup>4</sup> 80 FR 2206 (January 15, 2015).

<sup>5</sup> Fine Particulate Matter National Ambient Air Quality Standards: State Implementation Plan Requirements; final rule; 81 FR 58009 (August 24, 2016).

inventory, a control strategy including reasonably available control measures and reasonably available control technology (RACM/RACT), an attainment demonstration with air quality modeling, a reasonable further progress (RFP) demonstration, quantitative milestones, contingency measures, and a nonattainment new source review (NNSR) program.<sup>6</sup> The PM<sub>2.5</sub> SIP Requirements Rule also established the due date for Moderate area PM<sub>2.5</sub> SIP submissions as no later than 18 months from the effective date of area designations.<sup>7</sup> Accordingly, the areas designated as nonattainment for the 2012 PM<sub>2.5</sub> NAAQS (with an effective date of April 15, 2015) were required to submit Moderate area attainment plans to EPA no later than October 15, 2016.

### **III. Consequences of Findings of Failure to Submit**

For plan requirements under part D, title I of the CAA, such as those for PM<sub>2.5</sub> nonattainment areas, if EPA finds that a state has failed to make the required complete SIP submission, then CAA section 179 establishes specific consequences, including the eventual imposition of mandatory sanctions for the affected area(s). Additionally, such a finding triggers an obligation under CAA section 110(c) for EPA to promulgate a FIP no later than 2 years from the effective date of the finding, if the affected state has not submitted, and EPA has not approved, the required SIP submission.

If EPA has not affirmatively determined that a state has submitted a complete SIP addressing the deficiency that is the basis for these findings within 18 months of the effective date of this rulemaking, or the submission has not become complete by operation of law 6 months after submission, then, pursuant to CAA section 179(a) and (b) and 40 CFR 52.31, the

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<sup>6</sup> 40 CFR 51.1003(a)(2).

<sup>7</sup> 40 CFR 51.1003(a)(1).

emissions offset sanction identified in CAA section 179(b)(2) will apply in the affected nonattainment area. If EPA has not affirmatively determined that the state has submitted a complete SIP addressing the deficiencies that are the basis for these findings within 6 months after the offset sanction is imposed, or the submission has not become complete by operation of law 6 months after submission, then the highway funding sanction will apply in the affected nonattainment area, in accordance with CAA section 179(b)(1) and 40 CFR 52.31. The state must make the required SIP submission and EPA must take final action to approve the submission within 2 years of the effective date of these findings; otherwise, EPA is required to promulgate a FIP to address the relevant requirements. This is required pursuant to CAA section 110(c) for the affected nonattainment area.

#### **IV. Findings of Failure to Submit for States that Failed to Make a Moderate**

##### **Nonattainment Area SIP Submission**

In this action, EPA is finding that the states listed in Table 1 have failed to submit specific Moderate area SIP elements for the 2012 PM<sub>2.5</sub> NAAQS required under subpart 4 of part D of title I of the CAA.

**Table 1. Findings of Failure to Submit Certain Required SIP Elements for 2012 PM<sub>2.5</sub> NAAQS Moderate Nonattainment Areas**

<b>Region</b>	<b>State</b>	<b>Area Name</b>	<b>Required SIP Elements</b>
3	PA	Allegheny County	<ul style="list-style-type: none"> <li>• Emissions inventory;</li> <li>• Control strategy, including RACM/RACT;</li> <li>• Attainment demonstration;</li> <li>• RFP;</li> <li>• Quantitative milestones; and</li> <li>• Contingency measures;</li> <li>• NNSR program.</li> </ul>
3	PA	Delaware County	<ul style="list-style-type: none"> <li>• NNSR program.</li> </ul>
3	PA	Lebanon County	<ul style="list-style-type: none"> <li>• NNSR program.</li> </ul>

9	CA	Imperial County	<ul style="list-style-type: none"> <li>• Emissions inventory;</li> <li>• Control strategy, including RACM/RACT;</li> <li>• Attainment demonstration;</li> <li>• RFP;</li> <li>• Quantitative milestones; and</li> <li>• Contingency measures.</li> </ul>
10	ID	West Silver Valley	<ul style="list-style-type: none"> <li>• Control strategy, including RACM/RACT;</li> <li>• Attainment demonstration;</li> <li>• RFP;</li> <li>• Quantitative milestones; and</li> <li>• Contingency measures.</li> </ul>

## V. Environmental Justice Considerations

EPA believes that the human health or environmental risks addressed by this action will not have disproportionately high or adverse human health or environmental effects on minority, low-income, or indigenous populations. This is because it does not directly affect the level of protection provided to human health or environment under the PM<sub>2.5</sub> NAAQS. The purpose of this rule is to make findings that three states have failed to provide EPA with the identified SIP submissions, which are required by the CAA for purposes of implementing the 2012 PM<sub>2.5</sub> NAAQS. As such, this action does not directly affect the level of protection provided for human health or the environment. Moreover, it is intended that the actions and deadlines resulting from this notice will lead to greater protection for United States citizens, including minority, low-income, or indigenous populations by ensuring that states meet their statutory obligation to develop and submit SIPs to ensure that areas make progress toward attaining the 2012 PM<sub>2.5</sub> NAAQS.



## **VI. Statutory and Executive Order Reviews**

### *A. Executive Order 12866: Regulatory Planning and Executive Order 13563: Improving Regulation and Regulatory Review*

This action is not a significant regulatory action, and therefore, was not submitted to the Office of Management and Budget (OMB) for review.

### *B. Executive Order 13771: Reducing Regulations and Controlling Regulatory Costs*

This action is not an Executive Order 13771 regulatory action because this action is not significant under Executive Order 12866.

### *C. Paperwork Reduction Act (PRA)*

This action does not impose an information collection burden under the provisions of the PRA. This final rule does not establish any new information collection requirement apart from what is already required by law. This rule relates to the requirement in the CAA for states to submit SIPs under CAA sections 172, 188 and 189 which address the statutory requirements that apply to areas designated as Moderate nonattainment for the 2012 PM<sub>2.5</sub> NAAQS.

### *D. Regulatory Flexibility Act (RFA)*

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the RFA. This action will not impose any requirements on small entities. The rule is a finding that the named states have not submitted the necessary SIP revisions.

### *E. Unfunded Mandates Reform Act of 1995 (UMRA)*

This action does not contain any unfunded mandate as described in UMRA 2 U.S.C. 1531-1538, and does not significantly or uniquely affect small governments. The action imposes no enforceable duty on any state, local or tribal governments or the private sector.

*F. Executive Order 13132: Federalism*

This action does not have federalism implications. It will not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government.

*G. Executive Order 13175: Consultation and Coordination with Indian Tribal Governments*

This action does not have tribal implications as specified in Executive Order 13175. This rule finds that three states have failed to submit SIP revisions that satisfy the nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 2012 PM<sub>2.5</sub> NAAQS. No tribe is subject to the requirement to submit an implementation plan under section 172, or under subpart 4 of part D of Title I of the CAA. Thus, Executive Order 13175 does not apply to this action.

*H. Executive Order 13045: Protection of Children from Environmental Health and Safety Risks*

EPA interprets Executive Order 13045 as applying only to those regulatory actions that concern health or safety risks that EPA has reason to believe may disproportionately affect children, per the definition of “covered regulatory action” in section 2-202 of the Executive Order. This action is not subject to Executive Order 13045 because it is a finding that three states have failed to submit SIP revisions that satisfy the Moderate nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 2012 PM<sub>2.5</sub> NAAQS and does not directly or disproportionately affect children.

*I. Executive Order 13211: Actions That Significantly Affect Energy Supply, Distribution or Use*

This action is not subject to Executive Order 13211, because it is not a significant regulatory action under Executive Order 12866.

*J. National Technology Transfer and Advancement Act (NTTAA)*

This rulemaking does not involve technical standards.

*K. Executive Order 12898: Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*

EPA believes the human health or environmental risk addressed by this action will not have potential disproportionately high and adverse human health or environmental effects on minority, low-income, or indigenous populations. In finding that three states have failed to submit SIP revisions that satisfy the Moderate nonattainment area planning requirements under sections 172, 188 and 189 of the CAA for the 2012 PM<sub>2.5</sub> NAAQS, this action does not directly affect the level of protection provided to human health or the environment. The results of this evaluation are contained in Section V of this preamble titled “Environmental Justice Considerations.”

*L. Congressional Review Act (CRA)*

This action is subject to the CRA, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

*M. Judicial Review*

Section 307(b)(1) of the CAA indicates which Federal Courts of Appeal have venue for petitions of review of final agency actions by EPA under the CAA. This section provides, in part, that petitions for review must be filed in the United States Court of Appeals for the District of Columbia Circuit, (i) when the agency action consists of "nationally applicable regulations promulgated, or final actions taken, by the Administrator," or (ii) when such action is locally or regionally applicable, if "such action is based on a determination of nationwide scope or effect

and if in taking such action the Administrator finds and publishes that such action is based on such a determination."

EPA has determined that this final rule consisting of findings of failure to submit certain of the required SIP revisions is "nationally applicable" within the meaning of section 307(b)(1) of the CAA. This final agency action affects three states with Moderate nonattainment areas located in three of the ten EPA Regional offices, and in two different U.S. Federal Circuit Courts (3rd Circuit for Pennsylvania and 9th Circuit for California and Idaho).

In addition, EPA has determined that this rule has nationwide scope or effect because it addresses a common core of knowledge and analysis involved in formulating the decision and a common interpretation of the requirements of 40 CFR part 51 appendix V applied to determining the completeness of SIPs in states across the country. This determination is appropriate because, in the 1977 CAA Amendments that revised CAA section 307(b)(1), Congress noted that the Administrator's determination that an action is of "nationwide scope or effect" would be appropriate for any action that has "scope or effect beyond a single judicial circuit." H.R. Rep. No. 95-294 at 323 - 324, reprinted in 1977 U.S.C.C.A.N. 1402-03. Here, the scope and effect of this action extends to the two judicial circuits that include the states across the country affected by this action. In these circumstances, CAA section 307(b)(1) and its legislative history authorize the Administrator to find the rule to be of "nationwide scope or effect" and, thus, to indicate that venue for challenges lies in the District of Columbia Circuit. Accordingly, EPA is determining that this rule is of nationwide scope or effect.

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the District of Columbia Circuit within 60 days from the date this final action is published in the **Federal Register**. Filing a petition for review

by the Administrator of this final action does not affect the finality of the action for the purposes of judicial review, nor does it extend the time within which a petition for judicial review must be filed, and shall not postpone the effectiveness of such rule or action.

**List of Subjects in 40 CFR Part 52**

Environmental protection, Approval and promulgation of implementation plans, Administrative practice and procedures, Incorporation by reference, Air pollution control, Intergovernmental relations, and Reporting and recordkeeping requirements.

Dated: March 26, 2018.

William L. Wehrum,  
Assistant Administrator.

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